

Equal Employment Opportunity Comm.

§ 1635.5

someone has a genetic variant associated with hereditary nonpolyposis colon cancer, and a test for a genetic variant for Huntington's Disease;

(ii) Carrier screening for adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring;

(iii) Amniocentesis and other evaluations used to determine the presence of genetic abnormalities in a fetus during pregnancy;

(iv) Newborn screening analysis that uses DNA, RNA, protein, or metabolite analysis to detect or indicate genotypes, mutations, or chromosomal changes, such as a test for PKU performed so that treatment can begin before a disease manifests;

(v) Preimplantation genetic diagnosis performed on embryos created using invitro fertilization;

(vi) Pharmacogenetic tests that detect genotypes, mutations, or chromosomal changes that indicate how an individual will react to a drug or a particular dosage of a drug;

(vii) DNA testing to detect genetic markers that are associated with information about ancestry; and

(viii) DNA testing that reveals family relationships, such as paternity.

(3) The following are examples of tests or procedures that are not genetic tests:

(i) An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes;

(ii) A medical examination that tests for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites;

(iii) A test for infectious and communicable diseases that may be transmitted through food handling;

(iv) Complete blood counts, cholesterol tests, and liver-function tests.

(4) Alcohol and Drug Testing—

(i) A test for the presence of alcohol or illegal drugs is not a genetic test.

(ii) A test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

(g) *Manifestation or manifested* means, with respect to a disease, disorder, or pathological condition, that an indi-

vidual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this part, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information.

§ 1635.4 Prohibited practices—in general.

(a) It is unlawful for an employer to discriminate against an individual on the basis of the genetic information of the individual in regard to hiring, discharge, compensation, terms, conditions, or privileges of employment.

(b) It is unlawful for an employment agency to fail or refuse to refer any individual for employment or otherwise discriminate against any individual because of genetic information of the individual.

(c) It is unlawful for a labor organization to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member.

(d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs to discriminate against any individual because of the individual's genetic information in admission to, or employment in, any program established to provide apprenticeship or other training or retraining.

§ 1635.5 Limiting, segregating, and classifying.

(a) A covered entity may not limit, segregate, or classify an individual, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive the individual of employment opportunities or otherwise affect the status of the individual as an employee, because of genetic information with respect to the individual. A covered entity will not be deemed to have violated this section if it limits or restricts an employee's job